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05 OCT 17 AM 11:05

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TENNESSEE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

CHESTINE L. MONTGOMERY,

Plaintiff,

v.

No. 03-2948 B

STATE OF TENNESSEE, et al.,

Defendants.

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ORDER DENYING DEFENDANT STATE OF TENNESSEE'S  
MOTION TO ALTER OR AMEND ORDER DENYING ITS  
MOTION FOR SUMMARY JUDGMENT

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Before the Court is the October 11, 2005 motion of the Defendant, the State of Tennessee (the "State"), to alter or amend, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, the October 4, 2005 denial of its motion for summary judgment. Although the Plaintiff has not yet responded to the motion and, indeed, the time for such response has not run, the Court nonetheless deems it necessary, as trial is imminent, to issue its ruling at this time.

The purpose of a motion to alter or amend judgment under Fed. R. Civ. P. 59(e) is to have the court reconsider matters properly encompassed in a decision on the merits. This rule gives the district court the power to rectify its own mistakes . . . Generally, three situations justify a district court altering or amending its judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent a manifest injustice. It is not designed to give an unhappy litigant an opportunity to relitigate matters already decided, nor is it a substitute for appeal.

Sherwood v. Royal Ins. Co. of Am., 290 F.Supp.2d 856, 858 (N.D. Ohio 2003) (internal citations and quotation marks omitted). A review of the Defendant's motion reveals that it constitutes merely a rehashing of the arguments previously presented to this Court by which the State seeks a second

bite at the apple, to which it is not entitled under Rule 59(e). Accordingly, the motion is DENIED.

IT IS SO ORDERED this 13<sup>th</sup> day of October, 2005.

  
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J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

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Honorable J. Breen  
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